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Civil Action No. 7:06-cv-00425

MEMORANDUM OPINION

By: Hon. James C. Turk
Senior United States District Judge

I.

II.

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(1) at the time of conviction settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000). A procedural impediment to § 2255 relief, such as the statute of limitations or the rule against successive petitions, does not render § 2255 review "inadequate." See In re Vial, 115 F.3d 1192, 1194 n. 5 (4th Cir. 1997).

Under In re Jones, it is clear that McNeil cannot proceed under § 2241. McNeil has not pointed to any change in the substantive law associated with his conviction, and a review of current federal law shows that the conduct for which he is currently incarcerated continues to constitute a criminal offense. See 18 U.S.C. § 924(c), § 2114. As McNeil fails to demonstrate that § 2255 is inadequate to test the validity of his supervised release sentence, he fails to prove that he is entitled to raise his current claim under § 2241. Therefore, the court must dismiss his petition without prejudice. An appropriate order shall be issued this day.

The Clerk is directed to send certified copies of this memorandum opinion and accompanying order to petitioner and to counsel of record for the respondent.

ENTER: This 26th day of July, 2006.



Senior United States District Judge